

**NOTICE OF REQUEST FOR COMMENTS
REGARDING
PROPOSED STANDARDS FOR
COURT INTERPRETERS**

The Administrative Office of Courts now seeks comments from the Bench, the Bar and the public on the proposed Standards for Court Interpreters.

Comments should be filed with the Administrative Office of Courts, Gartin Justice Building, Post Office Box 117, Jackson, Mississippi, 39205-0117, no later than Tuesday, May 31, 2011.

Rule 1: Scope

These rules shall apply to all courts in this state, including without limitation, municipal court, justice court, youth court, county court, circuit court, chancery court, and grand jury proceedings.

Interpreters for the hearing impaired are not covered by this code. *See Miss. Code Ann.* §§ 13-1-301 to 13-1-315 regarding guidelines for hearing impaired interpreters.

Comment

This rule recognizes that many individuals living in the United States readily read, speak, and understand English. However, this rule also acknowledges that there are others for whom English is not their primary language and for whom English is not readily understood. For those individuals with limited English proficiency (LEP), the failure to comprehend the English language can be a barrier to understanding and exercising their legal rights and may result in the deprivation of meaningful access to the judicial system by those individuals.

This rule is promulgated to assist the courts in this state in providing equal access to the courts for LEP individuals.

Rule 2. Definitions

- (a) Eligible Court Interpreter - an interpreter who possesses the qualifications outlined in Rule 7(a).
- (b) Registered Court Interpreter - an interpreter who possesses the qualifications outlined in Rule 7(b).
- (c) Certified Court Interpreter - an interpreter who possesses the qualifications outlined in Rule 7(c).
- (d) Non-Credentialed Interpreter - a court interpreter who has not met the requirements to be classified as eligible, registered, or certified as provided in Rule 7.
- (e) Interpretation - the unrehearsed transmission of a spoken message from one language to another.
- (f) Limited English Proficiency (LEP) individual - any party or witness who cannot readily understand or communicate in spoken English and who consequently cannot equally participate in or benefit from the proceedings unless an interpreter is available to assist the individual. The fact that a person for whom English is a second language knows some English does not prohibit that individual from being entitled to the services of an interpreter.
- (g) Participant - a party, witness, or other person in a legal proceeding.
- (h) Sight Translation - to read a document silently in one language and render it orally in another language.
- (i) Written Translation - the rendering of a written document from one language into a written document in another language.
- (j) Audio or Video Transcription and Translation - written transcription of the entire verbal content and translation of the non-English verbal content of an audio or video recording.

Rule 3. Determining Need for Interpretation

- (a) Appointing a court interpreter is a matter of judicial discretion. It is the responsibility of the court to determine whether a participant in a legal proceeding has a limited ability to understand and communicate in English.
- (b) Recognition of the need for a court interpreter may arise from a request by a party or counsel, the court's own voir dire of a party or witness, or disclosures made to the court by parties, counsel, court employees, or other persons familiar with the ability of the person to understand and communicate in English.

Comment

If any doubt exists regarding the ability of a person to comprehend proceedings fully or adequately express himself or herself in English, an interpreter should be appointed.

Rule 4. Appointment of Interpreter

- (a) Order of appointment
 - (1) The court shall appoint an interpreter according to the preference listed below:
 - (A) Certified court interpreter; followed by
 - (B) Registered court interpreter; followed by
 - (C) Eligible court interpreter; followed by
 - (D) Non-credentialed court interpreter.
 - (2) The court may appoint an interpreter of lesser preference (i.e., registered instead of certified, eligible instead of registered, or non-credentialed instead of eligible) only upon a finding that diligent, good faith efforts to obtain an interpreter of higher preference, as the case may be, have been made and none has been found to be reasonably available. A non-credentialed interpreter may be appointed only after the court has evaluated the totality of the circumstances including the gravity of the judicial proceeding and the potential penalty or consequence involved.

- (b) Appointment of a non-credentialed interpreter
 - (1) Before appointing a non-credentialed interpreter, the court shall make the following findings in open court and place those findings on the record:
 - (A) that the proposed interpreter appears to have adequate language skills, knowledge of interpreting techniques, and familiarity with interpreting in a court setting; and
 - (B) that the proposed interpreter has read, understands, and agreed to abide by the Mississippi Code of Ethics for Court Interpreters and the Mississippi Standards for Court Interpreters.
 - (2) A summary of the efforts made to obtain a certified, registered, or eligible interpreter, as well as a summary of the efforts to determine the capabilities of the proposed non-credentialed interpreter, shall be made in open court and placed on the record.
- (c) The court shall use the services of multiple interpreters where necessary to aid interpretation of court proceedings.

Comment

A court can determine an interpreter's credentialing status by consulting the interpreter registry, which can be found on the AOC's website:

<http://www.mssc.state.ms.us/aoc/aoc.html>

Rule 4(c). The court may wish to consider using multiple interpreters in legal proceedings in which one or more of the following situations exist:

Legal proceedings lasting more than two hours - Generally, in legal proceedings lasting more than two hours, a team of two interpreters should be designated to ensure the accuracy and completeness of the record. This will allow interpreters to alternate work and rest in short shifts, thus avoiding fatigue. Although it may not be necessary to use multiple interpreters for short hearings, studies have shown that interpreters' accuracy rates greatly decrease after 20-30 minutes of continuous interpretation. Therefore, courts should be aware that interpreters may need breaks during relatively short hearings.

Multiple defendants - One or more interpreters may be appointed (apart from those interpreting the legal proceedings) in order to provide interpreting services for attorney-client communications during the proceeding. However, courts should be aware that ethical considerations do not preclude interpreters from facilitating in-court and out-of-court communication for both the court and one or more parties in the same proceeding.

See the commentary to Canon 8 of the Mississippi Code of Ethics for Court Interpreters for additional information regarding circumstances in which it may be advisable to use multiple interpreters.

Rule 5. Waiver

The LEP individual may at any point in the proceeding waive the services of a court interpreter. The waiver of the interpreter's services must be in writing in the person's native language. In addition, the waiver must be knowing and voluntary and with the approval of the court. Any deliberations made on matters of waiver or the retraction of a waiver should be made on the record. Granting such waiver is a matter of judicial discretion.

- (a) The waiver may be approved only after:
 - (1) the court explains in open court to the LEP individual, through an interpreter, the nature and effect of the waiver; and
 - (2) the court determines in open court that the waiver has been made knowingly, intelligently, and voluntarily; and
 - (3) if a criminal matter, the court must further determine that the defendant has been afforded the opportunity to consult with his or her attorney regarding the waiver.
- (b) At any point in any proceeding the LEP individual may retract the waiver and request an interpreter.

Rule 6. Interpreter Oath

- (a) All court interpreters, before commencing their duties, shall take an oath that they will make a true and impartial interpretation using their best skills and judgment in accordance with the standards and ethics of the interpreter profession. The court shall use the following oath:

"I solemnly swear or affirm that I will interpret from (state the language) into English and from English into (state the language) accurately, completely and impartially, using my best skill and judgment in accordance with prescribed law, the Mississippi Rules on Standards for Court Interpreters, and the Mississippi Code of Ethics for Court Interpreters and discharge all the solemn duties and obligations of legal interpretation and translation."

- (b) Pursuant to Miss. Code Ann. § 9-21-77 (Supp. 2006), the interpreter will be required to subscribe to this oath prior to any court proceedings.

Comment

It is common practice for interpreter oaths to be sworn to and maintained on file for all interpreters who are regularly employed by a court. This simplifies the court's inquiries in open court during procedural hearings. It is recommended, however, that an oath be read and sworn to in open court in all proceedings conducted before a jury.

The Mississippi Code of Ethics for Court Interpreters addresses the various ethical responsibilities of court interpreters for accuracy and completeness, impartiality, confidentiality, and other matters relating to the professional conduct of interpreters. The court should be alerted to potential conflicts of interest or other violations of the Mississippi Code of Ethics for Court Interpreters. The sanction of removal from the case is justified for any violations of the Mississippi Code of Ethics for Court Interpreters.

Rule 7. Certified, Registered, and Eligible Court Interpreters

(a) Eligible Court Interpreters

- (1) To receive designation as an eligible court interpreter, the candidate shall:
- (A) Complete required forms and pay required fees;

- (B) Provide verification of United States citizenship or the legal right to work and remain in the United States;
- (C) Submit to a criminal background check. **Convictions for any felony shall disqualify a candidate from serving as an interpreter in this state.** Convictions for a misdemeanor involving dishonesty or false statement shall disqualify a candidate from certification if such conviction is ten years old or less as provided in Mississippi Rule of Evidence 609;
- (D) Attend an approved two-day ethics and skill-building workshop;
- (E) Pass an approved criterion-referenced written examination with a minimum overall score of 80%;
- (F) Execute the Interpreter Oath pursuant to Rule 6(a) and (b); and
- (G) Complete any additional requirements established by the Director of the Administrative Office of Courts pursuant to subsection (d).

(2) Eligible Court Interpreters and Oral Proficiency Interview

- (A) An eligible court interpreter cannot choose to remain an eligible court interpreter indefinitely. It is a requirement that each eligible court interpreter sit for the oral proficiency interview (OPI) pursuant to the following rules.
 - (i) An eligible interpreter *must* sit for the interview at least once every twelve months from the later of the date the individual is designated as an eligible court interpreter or the date the OPI became available until the individual receives a passing grade to become a registered court interpreter.
 - (ii) **Failure to sit for the OPI as required shall result in the loss of designation as an eligible court interpreter, and the interpreter shall be required to begin the credentialing process anew.**
 - (iii) An eligible court interpreter must pass the OPI within twenty-four (24) months from the later of the date the

individual is designated as an eligible interpreter or the date the OPI became available.

(iv) **Failure to pass the OPI as required shall result in a loss of designation as an eligible court interpreter, and the interpreter shall be required to begin the credentialing process anew.**

(v) If an OPI is not available, the interpreter may maintain eligible status as long as the interpreter maintains and renews his or her credentials pursuant to subsection (d).

(b) Registered Court Interpreters

(1) To receive designation as a registered court interpreter, the candidate shall:

(A) Successfully meet the requirements to be designated as an eligible court interpreter;

(B) Have passed an Oral Proficiency Interview (OPI); and

(C) Complete any additional requirements established by the Director of the Administrative Office of Courts pursuant to subsection (d).

(2) Registered Court Interpreters and Oral Performance Examination

(A) A registered court interpreter cannot choose to remain a registered court interpreter indefinitely. It is a requirement that each registered court interpreter sit for the oral performance examination pursuant to the following rules.

(i) If an oral performance examination is available or becomes available, a registered court interpreter *must* sit for the examination at least once every twelve (12) months from the later of the date the individual is designated as a registered court interpreter or the date the examination becomes available until the individual receives a passing grade to become a certified court interpreter.

(ii) **Failure to sit for the oral performance examination as required shall result in the loss of designation as a**

registered court interpreter, and the interpreter shall be required to begin the credentialing process anew.

- (iii) A registered court interpreter *must* pass an oral performance examination within twenty-four (24) months from the later of the date the individual is designated as an eligible interpreter or the date the examination became available.
- (iv) **Failure to pass the oral examination as required shall result in a loss of designation as a registered court interpreter, and the interpreter shall be required to begin the credentialing process anew.**
- (v) If an oral performance examination is not available, the interpreter may maintain registered status as long as the interpreter maintains and renews his or her credentials pursuant to Rule 9.

(c) Certified Court Interpreters

- (1) To receive designation as a certified court interpreter, the candidate shall:
 - (A) Successfully meet the requirements to be designated as a registered court interpreter;
 - (B) Have passed an approved criterion-referenced oral performance examination; and
 - (C) Complete any additional requirements established by the Director of the Administrative Office of Courts pursuant to subsection (d).
- (d) The Director of the Administrative Office of Courts shall determine appropriate examination registration fees as well as examination eligibility requirements, requirements for successful completion of examinations, and penalties for unsuccessful completion of examinations. The Director of the Administrative Office of Courts also has the authority to impose additional requirements for a court interpreter to earn, retain, or reinstate status as an eligible, registered or certified court interpreter. The Director is authorized to adopt policies and procedures necessary to implement this provision of the rule.

Comment

A "criterion-referenced" performance examination is one in which the required score is based on an absolute standard rather than one on the relative performance of examinees as measured against one another.

Court interpretation is a specialized and highly demanding form of interpreting. It requires skills that few bilingual individuals, including language instructors, possess. The knowledge and skills of a court interpreter differ substantially from or exceed those required in other interpretation settings, including social service, medical, diplomatic, and conference interpreting. Due to the highly specialized knowledge and skills required in this profession, this rule has been promulgated to adopt uniform qualifications for interpreters serving in Mississippi's courts.

Court interpreters are responsible for familiarizing themselves with the credentialing requirements. For additional information, interpreters should consult the interpreter page of the AOC's website, which may be accessed at:

<http://www.mssc.state.ms.us/aoc/aoc.html>

Rule 8. Reciprocity

Court interpreters from the federal system and/or from other states will be offered reciprocity for purposes of interpreting in Mississippi state courts based upon standards adopted by the National Center for State Courts' Consortium for Language Access in the Courts. In addition, interpreters seeking reciprocity must meet the requirements of Rule 7 above. Interpreters with any other type of certification will be reviewed on a case-by-case basis to determine what steps the interpreters must take to be granted reciprocity.

To be considered for reciprocity, the following requirements/conditions must be met:

- (1) The applicant must file an application for reciprocity as well as tender the required application fee.
- (2) The applicant must request that the state in which the applicant currently possesses credentials send the AOC proof of attendance at a two-day or fourteen (14) hour orientation, criterion-referenced written examination scores, and oral performance examination scores on state letterhead indicating whether the state is a member of the Consortium for Language Access in the Courts. A copy of the rater evaluation form must also

accompany the supporting documentation.

- (3) The out-of-state credentials must be current in the issuing state or federal program at the time of the request. Those credentials may not be temporary, alternative, or conditional.
- (4) At the discretion of the Director, the applicant may be required to submit to an oral proficiency interview (OPI) which tests foreign language skills.
- (5) The applicant must complete any additional requirements or forms set forth by the AOC. In addition the applicant must tender any required fees.
- (6) The applicant must successfully pass a criminal background check.
 - (A) The AOC will provide the applicant with the necessary information for a criminal background check.
 - (B) The applicant will be responsible for paying any fees associated with the criminal background check.

(NOTE: FELONY CONVICTIONS DISQUALIFY ONE FROM SERVING AS AN INTERPRETER IN THE COURTS OF THE STATE OF MISSISSIPPI. Conviction for a misdemeanor involving dishonesty or false statement will disqualify an interpreter if such conviction is ten years old or less as provided in Mississippi Rule of Evidence 609.)

- (7) The applicant must submit a signed interpreter oath.
- (8) The applicant must provide verification of United States citizenship or the legal right to work and remain in the United States.

Once the applicant has complied with the above requirements/conditions, the Director will make the final determination as to whether the applicant will receive reciprocity.

Rule 9. Renewal of Credentials

- (a) All credentialed court interpreters shall be required to renew their credentials every three years. The three-year effective period begins on July 1 following the date of credentialing. Renewals are from July 1 of one year to June 30 of the third year for three-year periods.

- (b) Renewing credentials requires the following:
- (1) The interpreter must provide documentation of eighteen (18) hours of approved continuing interpreter education (CIE) credits received during the three-year period. A CIE credit is equal to one contact hour in the classroom. A minimum of twelve (12) of the eighteen (18) hours *must* consist of non-English language or interpreting skills training.
 - (2) The interpreter must complete and submit the required forms and pay the required fees.
 - (3) The Director has the authority to impose additional requirements for an interpreter to renew credentials. The Director is authorized to adopt policies and procedures necessary to implement this provision of the rule.

Comment

Court interpreters are responsible for familiarizing themselves with the renewal requirements. For additional information, interpreters should consult the interpreter page of the AOC's website, which may be accessed at:

<http://www.mssc.state.ms.us/aoc/aoc.html>

Rule 10. Removal of a Court Interpreter in Individual Cases

Any of the following actions shall be good cause for a judge to remove a court interpreter from a case:

- (1) Incompetence;
- (2) Being unable to interpret adequately, including instances in which the interpreter self-reports such inability;
- (3) Knowingly and willfully making false, misleading, or incomplete interpretation while serving in an official capacity;
- (4) Knowingly and willfully disclosing confidential or privileged information obtained while serving in an official capacity;

- (5) Misrepresentation of credentials;
- (6) Failure to reveal potential conflicts of interest; or
- (7) Failing to follow other standards prescribed by law and the Mississippi Code of Ethics for Court Interpreters.

Comment

It is important to recognize that interpreters are sometimes called to court to interpret for someone who speaks a different language or dialect from that spoken by the interpreter. Rule 6 authorizes the court to remove interpreters who are not competent to interpret for this or any other reason or who violate the Mississippi Code of Ethics for Court Interpreters.